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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/618,971      | 07/14/2003  | Richard J. Dibbs     | 17306/107           | 5927             |

26646 7590 10/27/2005

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| EXAMINER |
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VAN, QUANG T

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3742

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                   |  |
|------------------------------|-----------------|-------------------|--|
| <b>Office Action Summary</b> | Application No. | Applicant(s)      |  |
|                              | 10/618,971      | DIBBS, RICHARD J. |  |
|                              | Examiner        | Art Unit          |  |
|                              | Quang T. Van    | 3742              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 50-56,86-97 and 100-109 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 50-56,86-97 and 100-109 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 50, 52-54, 87 are rejected under 35 U.S.C. 102(b) as being anticipated by Hwang (US 5,078,120). Hwang discloses a cooking oven for slow cooking of food products comprising a spiral oven (figure 1) configured or capable to increase a temperature to a first predetermined temperature for a predetermined time interval (col. 9, lines 37-40).

NOTE: "Expressions relating the apparatus to contents thereof during an intended operation are no significance in determining patentability of the apparatus claim". *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "Inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims". *In re Young*, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, in-shell egg is considered material or article worked upon which does not limit apparatus claims, therefore no patent weight is given to these claims.

3. Claims 56, 89-91, 94, 102, 105-106 are rejected under 35 U.S.C. 102(b) as being anticipated by Polster (US 6,113,961). Polster discloses a grader configured to grade the in-shell egg (col. 2, lines 26-33), an oven configured to increase a temperature of an in-shell egg to a first predetermined temperature in a range of between 1200F and

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1400F for a predetermined time interval (col. 10, lines 51-54), a packer configured to pack the in-shell egg (col. 14, lines 62-65).

NOTE: "Expressions relating the apparatus to contents thereof during an intended operation are no significance in determining patentability of the apparatus claim". *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "Inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims". *In re Young*, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, as long as Polster's reference having a cavity capable "to increase a temperature of an in-shell egg in a non-batch manner to an elevated temperature for a time interval" that will meet the claimed limitation. The egg is considered material or article worked upon which does not limit apparatus claims, therefore no patent weight is given to these claims.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 51, 55, 101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hwang (US 5,078,120) in view of Ball et al (US 6,455,094). Hwang discloses substantially all features of the claimed invention except a cooler arranged downstream of the oven and configured to reduce the temperature to a second predetermined

temperature in a range between 45<sup>0</sup>F and 75<sup>0</sup>F. Ball discloses a cooler arranged downstream of the oven and configured to reduce the temperature to a second predetermined temperature in a range of between 45<sup>0</sup>F and 75<sup>0</sup>F (col. 8, lines 58-65 and col. 7, lines 14-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Hwang a cooler arranged downstream of the oven and configured to reduce the temperature to a second predetermined temperature in a range of between 45<sup>0</sup>F and 75<sup>0</sup>F as taught by Ball et al in order to reduce the temperature of the object after the pasteurization process.

6. Claim 86 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hwang (US 5,078,120) in view of Plemons et al (US 4,079,666). Hwang discloses substantially all features of the claimed invention except a spiral cooler arranged downstream of the oven. Plemons discloses a spiral cooler (70) arranged downstream of the oven (Figure 3, col. 5, lines 1-6 and col. 4, lines 55-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Hwang, a spiral cooler arranged downstream of the oven as taught by Plemons in order to reduced the temperature of the in-shell egg to a second temperature.

7. Claims 88, 92, 97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polster (US 6,113,961) in view of Ball et al (US 6,455,094) cited by applicant. Polster discloses substantially all features of the claimed invention except a cooler arranged downstream of the oven and configured to reduce the temperature to a second predetermined temperature in a range between 45<sup>0</sup>F and 75<sup>0</sup>F. Ball discloses a cooler (70) arranged downstream of the oven and configured to reduce the temperature

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to a second predetermined temperature in a range of between 45°F and 75°F (col. 8, lines 58-65 and col. 7, lines 14-18 and col. 14, lines 63-67 and col. 15 lines 1-10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Polster a cooler arranged downstream of the oven and configured to reduce the temperature to a second predetermined temperature in a range of between 45°F and 75°F as taught by Ball et al in order to reduce the temperature of the object to a second temperature.

8. Claim 93 is rejected under 35 U.S.C. 103(a) as being unpatentable over Polster (US 6,113,961) in view of Plemons et al (US 4,079,666). Polster discloses substantially all features of the claimed invention except a spiral cooler arranged downstream of the oven. Plemons discloses a spiral cooler (70) arranged downstream of the oven (Figure 3, col. 5, lines 1-6 and col. 4, lines 55-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Polster, a spiral cooler arranged downstream of the oven as taught by Plemons in order to reduced the temperature of the in-shell egg to a second temperature.

9. Claims 95, 100, 103 and 107-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polster (US 6,113,961) in view of Hwang (US 5,078,120). Polster discloses substantially all features of the claimed invention except the temperature increasing cavity includes a spiral oven. Hwang discloses a temperature increasing cavity (12) includes a spiral oven (Figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Polster

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temperature increasing cavity includes a spiral oven as taught by Hwang in order to pasteurized plurality of objects at the same time while passing through the oven.

10. Claim 96 is rejected under 35 U.S.C. 103(a) as being unpatentable over Polster (US 6,113,961) in view of Scharfman (US 3,830,945). Polster discloses substantially all features of the claimed invention except the temperature increasing cavity comprises a microwave oven. Scharfman discloses a temperature increasing cavity (12) comprises a microwave oven (col. 2, lines 47-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Polster temperature increasing cavity comprises a microwave oven as taught by Scharfman in order to have a high heating temperature in a short time.

11. Claim 104 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hwang (US 5,078,120) in view of Scharfman (US 3,830,945). Hwang discloses substantially all features of the claimed invention except the oven further comprises a microwave generating oven. Scharfman discloses an oven (12) further comprises a microwave generating oven (col. 2, lines 47-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Hwang an oven further comprises a microwave generating oven as taught by Scharfman in order to have a high heating temperature in a short time.

### ***Response to Amendment***

12. Applicant's arguments with respect to claims 50-56, 86-97 and 100-109 have been considered but are moot in view of the new ground(s) of rejection.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang T. Van whose telephone number is 571-272-4789. The examiner can normally be reached on 8:00Am 7:00Pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



QV

October 20, 2005



Quang T Van  
Primary Examiner  
Art Unit 3742